

ORDER NO. 78661

In the Matter of the Electric Universal
Service Program.

Case No. 8903

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On August 1, 2003, the Public Service Commission ("the Commission") issued a directive to the Office of Home Energy Programs ("OHEP") to show cause why its approvals of heat pumps, air conditioners and other appliances under the Electric Universal Service Program (or "EUSP") was not in violation of the Commission's orders and why an order to cease and desist approving such measures should not issue. OHEP responded on August 11, 2003.

In its filing, OHEP stated that "[i]n response to the Show Cause Order . . . OHEP has notified its weatherization contractor, Maryland Energy Conservation, Inc. that, effective immediately, OHEP will not authorize electric heat pumps, furnace electric starters, or room air conditioners to be installed under the Weatherization contract."¹ Nonetheless, OHEP asserts that heat pumps and furnace starters are non-portable parts of a home heating system and, as such, should not be considered appliances. OHEP requests that the Commission clarify its interpretation of Order No. 76049 in this regard.

In response to OHEP's filing, other parties including the Commission's Staff ("Staff"), the Office of People's Counsel ("OPC") and the Maryland Industrial Group ("MIG") also filed comments. Notwithstanding its comments regarding the OHEP's Invitation For Bids process, Staff suggests that OHEP's cessation of further appliance replacement and its intention to modify its weatherization contract was sufficient to satisfy its concerns at this time. OPC also submits that notwithstanding OHEP's error, it does not believe that OHEP's handling of this matter was an intentional violation of the Commission's orders.² MIG asserts that OHEP has failed to provide clear and complete

¹ Furthermore, OHEP noted that a contract modification would be executed to remove such items as deliverables under the contract.

² OPC notes that the Commission's Order on Rehearing - Order No. 76049 focused on portable items such as refrigerators and window air conditioning units, as opposed to heating equipment. This, according to OPC, should be viewed as mitigating against any finding that OHEP intentionally violated the

information regarding its management of EUSP funds and suggests that the Commission procure a "consent order" with OHEP regarding its determination to cease the installation of appliances.

The Commission believes that in light of OHEP's acknowledgement that it will no longer approve appliance installations under its contract, the concern in this regard has been addressed. However, OHEP is again directed to file appropriate compliance pages for its FY 2004 Proposed Operations Plan reflecting the removal of "appliance replacement" and the substitution therein of "information regarding the need for appliance replacement."

The Commission denies OHEP's request for clarification of Order No. 76049. The statutory definition of weatherization does not distinguish between appliances used for cooling or heating purposes; rather, it addresses structural repairs and improvements and specifically "the systematic application of insulation materials to a structure to retard the loss of heated or cooled air within that structure."³ Therefore, the Commission does not believe that any further clarification of its order in this regard is necessary.

As a final matter, the parties are directed to resume the working group to address the issues identified in the Commission's June 26, 2003 directive (notwithstanding OHEP's previous response). A comprehensive report of the working group concerning these matters shall be filed on or before November 1, 2003.

IT IS THEREFORE, this **16th** day of September, in the year Two Thousand Three, by the Public Service Commission of Maryland,

ORDERED: (1) That the Office of Home Energy Programs' determination that it shall cease approving appliance replacements under the EUSP low-income weatherization program is accepted;

(2) That the Commission's directive of June 26, 2003 providing that OHEP file appropriate compliance pages for its FY 2004 Proposed Operations Plan

Commission's Orders. (Although, this leaves no explanation for the window air conditioning units that were in fact replaced under the FY 2002 program).

³ MD. ANN. CODE, Article 41, § 6-402.

reflecting the removal of "appliance replacement" and the substitution therein of "information regarding the need for appliance replacement" is reaffirmed;

(3) That OHEP's request for clarification of Order No. 76049 is denied; and,

(4) A comprehensive report of the working group concerning the issues specified in the Commission's June 26, 2003 directive shall be filed with the Commission on or before November 1, 2003.

/s/ Kenneth D Schisler

/s/ J. Joseph Curran, III

/s/ Gail C. McDonald

/s/ Ronald A. Guns

/s/ Harold D. Williams

Commissioners